

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1286 of 1996

with

SPECIAL CIVIL APPLICATION No 1708 of 1996

cr

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

GYAN MANDAL LAXMIPURA GROUP

Versus

BHIKHABHAI NARJIBHAI PATEL

Appearance:

1. Special Civil Application No. 1286 of 1996
MR SK PATEL for Petitioner
MR HK RATHOD for Respondent No. 1
2. Special Civil Application No 1708 of 1996
MR HK RATHOD for Petitioner
MR SK PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 12/04/96

COMMON JUDGMENT ;

1. These two Special Civil Applications have been filed against the Award dated 17-10-95. The employee as well as the employer are aggrieved against this Award and, therefore, both have come in separate Special Civil

Applications.

2. The Labour Court, Ahmedabad has granted the relief of reinstatement with continuity of service and 50% backwages and the cost of Rs.500/- against the employer.

3. The workman, namely, Bhikhabhai N.Patel was working as a clerk with Gyan Mandal Laxmipura Group Prerit Arogya Mandal, which runs the Hospital. He was appointed on 16-4-85. It is alleged that he had proceeded on leave from 1-5-87 and reported back on 26-5-87 when he was told by the employer that his services are terminated and thus he stood terminated from 26-5-87. The workman's case was that no inquiry was conducted and his termination was unjust, illegal, malafide and contrary to the Standing Orders and before terminating him no notice was given nor any compensation was paid and hence it was a case of unlawful retrenchment. Although the case of the employer was that the Hospital construction work was over and, therefore, the services of Bhikhabhai N. Patel were no more required and accordingly he was terminated. The workman raised the industrial dispute, which has been decided by the Labour Court, Ahmedabad granting the relief of reinstatement with continuity of service and 50% backwages.

4. The Labour Court has found that the provisions of S.25F of the Industrial Disputes Act had not been followed and in absence of these requirements having been followed, it was a case of unlawful retrenchment and, therefore, the workman was entitled to the relief of reinstatement. Thus, so far as the relief of reinstatement and continuity of service is concerned, the Award being made on account of the breach of S.25F, the same does not warrant any interference inasmuch as the requirements of S.25F cannot be said to have been met by giving a simple notice. Even if the notice, as provided under S.25F had been given, retrenchment compensation, as provided under S.25F has also to be paid as a condition precedent and pre-requisite.

5. Mr. Patel, learned counsel appearing for the employer, has vehemently contested the grant of 50% backwages to the workman and Mr. Rathod has submitted that the workman was in fact entitled to more than 50% backwages. Thus, the question which remains to be considered is as to whether the order passed by the Labour Court granting 50% of the backwages to the workman is proper or not. The Labour Court has noted that the

workman had himself admitted that he had remained in gainful employment for some time after the termination and, therefore, looking to the entirety of the facts and circumstances of the case, the Labour Court considered it to be a fit case for granting 50% backwages. Besides this, it may be pointed out that the employer had come with the case that the workman had remained gainfully employed after the termination and the workman had come with the specific case that after his termination, he remained in employment from 28-4-88 to 7-9-88 at the rate of Rs.800/- P.M. and further from 8-9-88 to 30-11-89 at the rate of Rs.1200/- P.M. Mr. Patel appearing on behalf of the employer has submitted that even in the year 1994 the workman was employed and Gyan Mandal Laxmipura Group Prerit Arogya Mandal had also sent a letter dated 1-10-94 to the present workman and had called upon him to come and join the employment with them, but he did not turn up and continued to work at the place where he was working in October, 1994 and in support of this submission he has invited my attention to the copies of the documents available at page Nos. 17 and 19 of Special Civil Application No.1286 of 1996. Merely because the workman did not join the employment of such employer during the pendency of the Reference in October 1994, it can not be said that it should form a basis to deny him the backwages as a whole. According to the specific data available on record, the workman has remained gainfully employed from 28-4-88 to 30-11-89 and even if it is taken as argued by Mr. Patel that he was employed some time in 1994 also, the view taken by the Labour Court on over all basis granting 50% of the backwages cannot be said to be perverse so as to warrant any interference by this Court. The total period of enforced idleness is about eight and half years and specific period for which the workman has remained gainfully employed is about one and half years. In this view of the matter, if the workman has been granted 50% of the backwages on an over all basis, keeping in view the facts in entirety, the relief of backwages can not be interfered either at the instance of the employer or at the instance of the employee. In the facts and circumstances of the case, according to me, the view taken by the Labour Court is not unreasonable and the Award seeks to render substantial justice between the parties and hence I do not find any scope of interference with the Award at the instance of either of the parties.

6. I do not find any merit in any of these two Special Civil Applications. Both are accordingly dismissed and the Rule is discharged in each of the two Special Civil Applications. Interim order, if any, shall

cease to operate. No order as to costs.

-0-